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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

KELLI GRAY, and all other similarly  
situated,

Plaintiffs,

v.

SUTTELL & ASSOCIATES, *et. al.*

Defendants.

Case No.: CV-09-251-EFS

MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
CONTINUANCE OF THE  
FEBRUARY 2012 TRIAL DATE AND  
AMENDED SCHEDULING ORDER

EVA LAUBER, DANE SCOTT,  
SCOTT BOOLEN, JOEL FINCH and  
all other similarly situated,

Plaintiffs

v.

ENCORE CAPITOL GROUP, INC. *et.*  
*al.*

Defendants

PLAINTIFFS' MOTION FOR  
CONTINUANCE OF THE FEBRUARY 2012  
TRIAL DATE AND AMENDED  
SCHEDULING ORDER 1

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1 All parties are in agreement that a new trial date and a new scheduling order  
2 is required. Since January 2011, Plaintiff has been circulating a draft joint  
3 certificate. The Defendants have refused to respond. On February 1, 2011, the  
4 parties agreed to join in a motion to convert the February 16, 2011 hearing<sup>1</sup> to a  
5 scheduling conference and request a new scheduling order. ECF No. 199. On  
6 February 2, 2011 the Court granted the joint motion and converted the February  
7 16, 2011 hearing to a scheduling conference. ECF No. 203. The flow of this case  
8 was interrupted by proposed national class settlement in Ohio. No amended  
9 scheduling order has yet been entered. Trial is currently set for February 21, 2012  
10 and trial deadlines are fast approaching. For example, the discovery cutoff is  
11 August 23, 2011, **and last day to serve written discovery is June 14, 2011.** An  
12 amended scheduling order is appropriate and necessary given the current  
13 procedural posture of this case.

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15 Plaintiffs agreed to move the February 16, 2011 hearing on class  
16 certification only to address the Defendants' concerns about post-consolidation  
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23 <sup>1</sup>On Plaintiffs' Motion for Class Certification and other motions. Defendants failed  
24 to reveal to Plaintiffs or the Court that they were in secret negotiations to settle  
25 nationwide and attempt to deprive the court of jurisdiction.

1 procedure. Unknown to the Plaintiffs' at the time, Mr. Theodore Seitz<sup>2</sup> was  
2 engaged in secret national class settlement negotiations in Ohio. Days before the  
3 February 16, 2011 status conference, the Encore entities finalized the secret  
4 national class settlement. On February 16, 2011, Ms. Gallegos, appeared on behalf  
5 of the Encore entities and announced the national class settlement to the Court. The  
6 motions previously set for February 16, 2011 were reset to March 23, 2011 (the  
7 date the Court was set to hear Plaintiffs' Second Motion to Compel). The Encore  
8 Defendants have refused to provide available dates for 30(b)(6) deposition despite  
9 the Court's December 2010 Order. ECF 182, p. 5, ln 24-26. For these reasons and  
10 other the trial schedule no longer works.  
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15 <sup>2</sup> Mr. Seitz represents the Midland entities in this action and the Ohio settlement  
16 trio of:

- 17     ▪ *Vassalle v. Midland Funding, LLC*, United States District Court Northern  
18       District of Ohio Western Division, Case No. 3:11CV96 (filed January 17,  
19       2011).
- 20     ▪ *Franklin v. Midland Funding, LLC*, United States District Court Northern  
21       District of Ohio Western Division, Case No. 3:10CV91; and
- 22     ▪ *Midland Funding, LLC v. Brent*, United States District Court Northern  
23       District of Ohio Western Division, Case No. 3:08CV1434 (remanded to  
24       Ohio municipal Court for want of subject matter jurisdiction).  
25

1 On March 11, 2011, an injunction was entered in the Northern District of  
2 Ohio. ECF 272-3. The Ohio Court has interpreted the injunction, this Court has  
3 ruled on the scope of the parties and issues which may be pursued, which have all  
4 impacted the trial and discovery schedule. ECF 299 & 364. To avoid potentially  
5 violating the injunction, the Plaintiffs were forced to modify their class motion  
6 hearing to exclude affidavit claims in advance of the March 23, 2011. On March  
7 23, 2011 the Court ordered the Plaintiff to file an Amended Complaint avoiding  
8 the Ohio injunction by April 8, 2011. ECF No. 299, pp. 9-10. On April 8, 2011, the  
9 Plaintiffs filed the Amended Complaint. ECF No. 297.

12 On April 15, 2011, the Court issued an order regarding the March 23, 2011  
13 hearing denying all pending motions (except the compel motion) with leave to  
14 renew and ordering the parties to submit a proposed joint briefing schedule “no  
15 later than April 29, 2011.” ECF No. 299, p. 16, ln. 3. Instead, on April 22, 2011  
16 and April 25, 2011, the Defendants filed three motions to dismiss. ECF Nos. 306,  
17 310 & 313. Those motions have been fully briefed and are set to be heard on July  
18 6, 2011.

21 The Court ruled the injunction did not prohibit claims against the Suttell  
22 Defendants. ECF No. 299, p. 9, ln. 6-7. But the defendants moved for  
23 reconsideration. ECF 300. The Order deciding that Motion was entered June 14,  
24 2011, the Court ruled that “Plaintiffs may pursue Affidavit Claims against the  
25

1 Suttell Defendants.” ECF No. 364, p. 3, ln. 16. Based on that Order, the Plaintiffs  
2 will be seeking to amend the complaint to re-allege the false affidavit claims  
3 against the Suttell Defendants.  
4

5 The Encore Defendants have made a motion to dismiss Ms. Lauber’s claim  
6 based on arbitration. That motion requires additional discovery. The Suttell  
7 Defendants have not answered the net worth discovery served in the Spring of  
8 2010. The agreement was they would have until after the class certification  
9 decision (which at that time was scheduled for September 2010, but has since been  
10 delayed twice). Plaintiff is worried about the June 14, 2011 deadline to serve  
11 additional written discovery.  
12

13  
14 For these reasons, the Plaintiffs respectfully request the Court enter and  
15 amended scheduling order.

16 Dated this the 14<sup>th</sup> day of June, 2011  
17

18 *Michael D. Kinkley P.S.*

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19  
20 s/Scott M. Kinkley

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PLAINTIFFS' MOTION FOR  
CONTINUANCE OF THE FEBRUARY 2012  
TRIAL DATE AND AMENDED  
SCHEDULING ORDER 6

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CM/ECF CERTIFICATE OF SERVICE

I hereby certify that on the 14<sup>th</sup> day of June, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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